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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 846

MATSON NAVIGATION COMPANY,
a corporation,
Petitioner,

vs.

EDDIE HUFF,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

Respondent Eddie Huff hereby responds to the petition for writ of certiorari and respectfully requests that the petition be denied.

PORTIONS OF PETITION ADOPTED BY RESPONDENT

Respondent adopts the following portions of the petition:

1. Opinions Below
2. Jurisdiction
3. Statutes involved
4. Statement of the case

QUESTION PRESENTED

The question presented is whether a ship is rendered unseaworthy when an unsafe place to work aboard the vessel results from defective shore-based equipment used in handling cargo.

REASONS FOR DENYING THE WRIT

Admittedly the decision below is in conflict with the decisions of the Second and Sixth Circuits. However, it correctly states the law as reflected in the decisions of this court. As pointed out in *Seas Shipping Co. v. Sieracki* (1946) 328 U.S. 85, 96 "That the owner seeks to have it (the work) done with the advantages of more modern division of labor does not minimize the worker's hazard and should not nullify his protection." The obligation to provide a seaworthy vessel is not negated because the unsafe equipment creating the dangerous condition belonged

to one other than the ship owner (*Alaska Steamship Company v. Petterson* [1954] 347 U.S. 396).

That the equipment involved is not "traditionally ship's gear" does not render the doctrine of *Petterson* inapplicable. As this court said in footnote 3 in *Italia Societa v. Oregon Stevedoring Co.* (1964) 376 U.S. 315, 317 "If the owner engages others to supply the equipment necessary to stevedoring operations, he must still answer to the longshoreman if the gear proves to be unseaworthy."

No valid distinction exists between an unsafe condition created by equipment which is shore-based and an unsafe condition created by equipment physically aboard the ship. Teleology rather than geography should be the test.

CONCLUSION

For these reasons it is respectfully submitted that the petition for writ of certiorari should be denied.

Dated, San Francisco, California,
Februray 9, 1965.

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